

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYWEE GROUP LTD.,

Plaintiff,

v.

HTC CORPORATION; and HTC AMERICA,
INC.,

Defendants.

CASE NO.: 2:17-cv-00932-JLR

JURY TRIAL DEMANDED

90-DAY JOINT STATUS REPORT

HTC CORPORATION, and HTC AMERICA,
INC.,

Third-Party Plaintiffs,

v.

CYWEE MOTION GROUP LTD.,

Third-Party Defendant.

Pursuant to the Court’s August 19, 2019, Order (ECF No. 146), Plaintiff CyWee Group Ltd. (“CyWee Group”), Defendants and Third-Party Plaintiffs HTC Corporation and HTC America, Inc., and Third-Party Defendant CyWee Motion Group Ltd. respectfully submit the following joint status report:

The Google IPRs:

On January 9, 2020, the PTAB held the following claims invalid in the two IPR proceedings filed by Google (the “Google IPRs”):

| Asserted Patent | IPR Case No. | Original Claims Held Invalid | Proposed Contingent Amended Claims Held Invalid |
|-----------------|---------------|------------------------------|-------------------------------------------------|
| 8,441,438 | IPR2018-01258 | 1, 3–5 | 20, 21 |
| 8,552,978 | IPR2018-01257 | 10, 12 | 19, 20 |

CyWee appealed the PTAB’s final written decisions in the Google IPRs. The Federal Circuit Court of Appeals affirmed those decisions. On April 4, 2021, CyWee filed petitions for *en banc* review. The Federal Circuit denied those petitions on June 3, 2021. Mandates issued on June 10, 2021. On September 23, 2021, per CyWee’s request, the Federal Circuit recalled the mandates, reinstated the appeals, and remanded the Google IPRs to allow CyWee the opportunity to request Director rehearing. On October 24, CyWee filed requests for *de novo* review by the Director in the Google IPRs. On January 7, 2022, the Commissioner for Patents denied review. On January 21, 2022, CyWee notified the Federal Circuit of that denial, and on April 21, 2022, CyWee filed its opening brief in the appeal. On February 8, 2023, the Federal Circuit affirmed PTAB’s ruling.

The ZTE IPR:

On February 17, 2021, the PTAB held all challenged claims invalid in an *inter partes* review proceeding filed by ZTE and joined by LGE (the “ZTE IPR”):

| Asserted Patent | IPR Case No. | Original Claims Held Invalid | Proposed Contingent Amended Claims Held Invalid |
|-----------------|--------------------------------|------------------------------|-------------------------------------------------|
| 8,441,438 | IPR2019-00143 IPR2019-01203 | 1, 4, 5, 14–17, 19 | 20-24 |

CyWee appealed the PTAB’s final written decision in the ZTE IPR on April 8, 2021. On June 30, 2021, CyWee filed a motion requesting that the Federal Circuit dismiss its appeal of the ZTE IPR and remand the matter to the USPTO for further proceedings in light of the Supreme Court’s recent decision in *United States v. Arthrex, Inc.*, No. 19-1434, 2021 WL 2519433 (June 21, 2021) holding that “the unreviewable authority wielded by APJs during *inter partes* review is incompatible with their appointment by the Secretary to an inferior office.” On July 14, 2021, the Federal Circuit issued an order (1) certifying CyWee’s constitutional challenge to the Attorney General, (2) directing the Attorney General to inform the Court within 30 days whether the United States intends to intervene and if so to file any response to CyWee’s motion to remand, (3) ordering appellee to file any response within that 30-day timeframe, and (4) staying the briefing schedule in the appeal. On August 13, 2021, the Under Secretary of Commerce for Intellectual Property and Director of the USPTO informed the Federal Circuit of its intention to intervene and filed a response. On September 24, 2021 (“September 24 Order”), per CyWee’s request, the Federal Circuit remanded the ZTE IPR to allow CyWee the opportunity to request Director rehearing. On October 25, CyWee filed a request for *de novo* review by the Director in the ZTE IPR. On January 7, 2022, the Commissioner for Patents denied review. On January 21, 2022, CyWee notified the Federal Circuit of that denial. On March 28, 2022, the Federal Circuit ordered that CyWee’s brief is due no later than 60 days from the date of filing of the updated certified list, and on July 15, 2022, CyWee filed its opening brief in the appeal. On September 23, 2022, Intervenor Katherine K. Vidal and the appellees each filed a respective responsive brief. On November 14, 2022, CyWee

1 filed its reply brief. Oral argument was held on September 6, 2023. On January 18, 2024, the
2 Federal Circuit affirmed PTAB's ruling.

3 Because the matters described above may affect claims in this case, neither party requests
4 lifting the stay at this time.

5 Dated: January 30, 2024

Respectfully submitted,

7 /s/ Carmen E. Bremer

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19 *Third-Party Defendant CyWee Motion Group Ltd.*

20 Dated: January 30, 2024

/s/ Ryan R. Smith

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Carmen E. Bremer
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